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July 26, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 31, 2006

Case Number: TSO-0350

This decision concerns the eligibility of XXX X XXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ This decision considers whether, on the basis of the evidence in this proceeding, the Individual's access authorization should be restored.

I. BACKGROUND

The present case concerns an Individual who has been diagnosed with Substance Dependence. The Individual does not dispute this diagnosis. Instead, the Individual asserts that he has mitigated the security concerns raised by his Substance Dependence.

The events leading to this proceeding began when the Local Security Organization (LSO) received information indicating that the Individual had been arrested for Driving While Intoxicated (DWI).² A personnel security interview (PSI) of the Individual was conducted. The Individual was then asked to submit to an examination by a DOE Psychiatrist. On September 1, 2005, a DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. On September 5, 2005, the DOE Psychiatrist issued a report in which she stated that the Individual met the criteria for Substance Dependence, Alcohol with Physiological Dependence, in Early Full Remission, as set forth in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR). DOE Psychiatrist's Report of Examination at 11-12. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated or reformed to resolve the

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

² The Individual had previously been arrested for Public Intoxication (PI).

security concerns raised by his Substance Dependence.

An administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification letter alleges that the Individual has “. . . been diagnosed by a board-certified psychiatrist . . . as . . . alcohol dependent. . . .” 10 C.F.R. § 710.8(j) (Criterion J). The Notification Letter also alleges that the Individual’s alcohol dependence is “an illness or mental condition of a nature which, in the opinion of a psychiatrist . . . causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h) (Criterion H). The Individual filed a request for a hearing. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA) who appointed me as Hearing Officer. At the hearing, the LSO presented one witness: the DOE Psychiatrist. The Individual presented seven witnesses: his girlfriend, his Alcoholics Anonymous (AA) sponsor (the Sponsor), two of his daughters, his supervisor, a co-worker who is also a close friend, and his substance abuse counselor (the Counselor). The Individual also testified on his own behalf.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

On May 23, 2004, the Individual was arrested for Public Intoxication. The Individual reported this arrest to the LSO. On September 21, 2004, at the LSO’s request, a PSI of the Individual was conducted. Apparently, the security concerns raised by this arrest were resolved in the Individual’s favor. On March 4, 2005, however, the Individual was arrested for Driving While Intoxicated (DWI). A second PSI of the Individual was conducted on June 15, 2005. This PSI did not resolve the security concerns raised by the Individual’s DWI and Public Intoxication arrests. Accordingly, the Individual was examined by the DOE Psychiatrist on September 1,

2005. The DOE Psychiatrist also reviewed selected portions of the Individual's security case file. On September 5, 2005, the DOE Psychiatrist issued a report in which she stated that the Individual met the criteria for Substance Dependence, Alcohol with Physiological Dependence, in Early Full Remission as set forth in the DSM-IV-TR, and further opined that the Individual was not sufficiently rehabilitated or reformed to resolve the security concerns raised by his Substance Dependence. DOE Psychiatrist's Report of Examination at 11-12.

The Individual does not dispute the DOE Psychiatrist's diagnosis of Substance Dependence. Tr. at 90. A finding of derogatory information does not, however, end the evaluation of evidence concerning the Individual's eligibility for access authorization. See *Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in deciding whether the Individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, the issue before me is whether the Individual has submitted sufficient evidence of rehabilitation or reformation to resolve the security concerns raised by his Substance Dependence. After considering all of the evidence in the record, I find that he has not.

In her Report, the DOE Psychiatrist states:

As adequate evidence of *rehabilitation* the Individual can do one of the following:

1. Produce documented evidence of attendance at Alcoholics Anonymous for a minimum of 100 hours with a sponsor, at least twice a week, for a minimum of one year and be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of one year following the completion of this program. This would equal two years of sobriety. [or]
2. Satisfactorily complete a minimum of 50 hours a professionally led substance abuse treatment program, for a minimum of six months, including what is called "aftercare" and be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum 1^{1/2} years following the completion of this program. This would equal [two] years of sobriety.

As adequate evidence of *reformation*, there are two alternatives:

1. If the [I]ndividual goes through one of the two rehabilitation programs listed above, 2 years of absolute sobriety would be necessary to show adequate evidence of reformation.
2. If the [I]ndividual does not go through one of the two rehabilitation programs listed above, 3 years of absolute sobriety would be necessary to show adequate evidence of reformation.

DOE Psychiatrist's Report at 12 (emphasis in the original).

The Record shows that, at the time of the hearing, the Individual had essentially done everything in his power to address his substance dependence, after his DWI arrest. The Individual began attending AA meetings in March 2005 and has continued to the present. Tr. at 117. The Individual is currently attending eight AA meetings a week. Tr. at 95. He had previously been attending 15 to 20 AA meetings a week. Tr. at 95. The Individual has obtained an AA Sponsor and is actively working the twelve steps of the AA program. The Individual has attended and completed an Intensive Outpatient Program (IOP) for Substance Abuse. Tr. at 88, 91. He is participating in an aftercare program. Tr. at 91, 140-41. The Individual meets with a counselor on at least a monthly basis to monitor his progress. Tr. at 140-41. Most importantly, the evidence in the Record shows that the Individual has abstained from using alcohol since March 5, 2005. Therefore, the Individual had almost 14 months of sobriety at the time of the Hearing. Tr. at 89, 103, 107, 119, 162. The Individual testified that he no longer craves alcohol. Tr. at 107.

The Individual's participation in AA has obviously been of great benefit to him. He testified quite convincingly of the importance of the AA program to him. He repeatedly testified that he greatly enjoys his AA activities. Tr. at 93-95, 106, 118. He testified that, through AA, he has been become active in helping others obtain and maintain their sobriety. Tr. at 93-94. The Individual testified that he has replaced going to the bar with going to AA meetings. Tr. at 106-07. The Individual testified that he plans to stay active in AA for the rest of his life. Tr. at 129. The Individual attributed his previous relapse, in part, to a lack of an AA program in his life. Tr. at 131.

The Individual's AA Sponsor testified (by telephone) at the Hearing. Concerning the Individual, the Sponsor testified: "He doesn't just talk the talk, he walks the walk." Tr. at 69. The Sponsor testified that the Individual attends meetings on a daily basis. Tr. at 71. The Sponsor testified that the Individual "is vigorously working the Steps [of the AA 12 -Step Program]." Tr. at 73. The Sponsor testified that the Individual is currently working Step Four of the 12-Step Program. Tr. at 73. The Sponsor testified that the Individual is a serious and enthusiastic participant in AA activities and that the Individual has become a respected leader within the organization. Tr. at 77-78.

The Individual's Counselor testified at the Hearing on his behalf. The Counselor testified that the Individual has been seeing her since March 8, 2005, four days after his DWI. Tr. at 137. At first, the Individual met with her on at least a bi-weekly basis, and now he meets with her on a monthly basis. Tr. at 139-40. The Counselor testified that the Individual had been open and honest with her during these counseling sessions. Tr. at 137-38. The Counselor testified that the Individual was ready to make a change in his life, when he first sought counseling from her. Tr. at 137. The Counselor agrees that the Individual is alcohol dependent. Tr. at 137. According to the Counselor's testimony, the Individual is currently "stable in recovery." Tr. at 145. In order to treat the Individual's alcohol dependence, she placed him on a recovery plan which had him complete the IOP, join AA, obtain an AA sponsor, attend an aftercare program and continue

counseling. Tr. at 144. The Individual completed a five-week IOP, four hours a day, four days a week. Tr. at 139. The Counselor testified that the Individual was attending aftercare and doing well there. Tr. at 140-41. The Counselor further noted that the Individual had documented attendance at approximately 500 AA meetings. Tr. at 142.

At the Hearing, the Counselor opined:

[The Individual] has immersed himself in the program, is very interested in service work or in giving back, and that's unusual as well, but [the Individual] is unusual in that way and not everyone attends AA with the same fervor that he does . . . that's just telling us that his likelihood of success is even more profound.

Tr. at 141-42. The Counselor further opined: "I'd put [the Individual] in the top ten percent [for] effort. He has done everything he has been asked to do, and he has done it with vigor." Tr. at 146. She noted that the Individual's knowledge and insight into his alcohol problem has grown over time, Tr. at 149, and his insight is good. Tr. at 153. The Counselor testified that she is of the opinion that the Individual has been sober for a sufficient length of time to lower his risk of relapse to an acceptable level. Tr. at 153. The Counselor testified that the Individual "has done as well as any client I have ever had." Tr. at 153.

The Individual's two adult daughters testified at the Hearing. Both daughters testified that they had observed significant positive changes in their father since he became involved in AA. Tr. at 7, 9-10, 13, 17, 20, 24. Both daughters testified that their father no longer drinks alcohol. Tr. at 8-9, 22, 24, 28.

The information discussed above shows that the Individual has made considerable progress towards reformation and rehabilitation of his Alcohol Dependence disorder. However, I am of the opinion that the Individual is not sufficiently reformed or rehabilitated, at this time, to resolve the security concerns arising from his Alcohol Dependence disorder. This conclusion is based largely upon the testimony of the DOE Psychiatrist. The DOE Psychiatrist was present during the entire hearing to observe the testimony of the Individual and each of his witnesses. After the Individual and his witnesses had testified, the DOE Psychiatrist was called to testify by the LSO.

The DOE Psychiatrist testified correctly that, as of the date of the Hearing, the Individual had not yet met the standards for rehabilitation or reformation set forth in her 2005 Report. The DOE Psychiatrist testified that the Individual would need at least two years of sobriety before he could be considered reformed or rehabilitated. Tr. at 171. The Individual's last drink occurred on March 4, 2005, almost 14 months prior to the Hearing.. The DOE Psychiatrist was not of the opinion that her original recommendations should be changed. Tr. at 185-86, 200. The DOE Psychiatrist testified that the Individual had been completely honest and forthright with her. Tr. at 157, 192. She testified that the Individual has a good support network. Tr. at 179. She testified that the Individual is currently "doing so great." Tr. at 168. She testified that the Individual recognizes that he has an alcohol problem and is not in denial. Tr. at 162-64. She noted that the Individual has exceeded his requirements for treatment. Tr. at 172, 177-78.

However, she remains concerned about the Individual's potential for relapse.

The DOE Psychiatrist testified that the Individual's has an unusually intense approach to his AA program and his recovery. Tr. 165-66. She testified that this intensity can be a double-edged sword. Tr. at 166. Specifically she stated: "There is a certain personality type that they get very intense pretty quickly into a relationship with an area of their life, but something happens and they could drop that." Tr. at 166. The DOE Psychiatrist repeatedly noted that the Individual has only been sober one year. Tr. at 166, 168. She noted that the Individual is currently being closely monitored and that she would like to see what happens when the individual is more on his own. Tr. at 168-69. She testified that she was concerned about the Individual's previous history of relapse, one after 3 months of abstaining from alcohol use and another which occurred after 8 years of abstinence. Tr. at 172, 176-77, 190-92. She testified that the length of sobriety was therefore the most important factor in this case. Tr. at 188-89. She testified that the Individual is still very vulnerable to relapse. Tr. at 188-89.

The instant case presents a difficult set of facts. The Individual has been extremely forthright about his Alcohol Dependence and has done everything he could possibly do to achieve and maintain his sobriety. It is therefore not surprising that the Counselor could testify so persuasively on his behalf. However, the DOE Psychiatrist has convincingly testified that the Individual needs to maintain at least two years of sobriety in order to establish sufficient reformation or rehabilitation from his long history of Alcohol Dependence. I agree with her analysis and conclusion. Accordingly, I find that the Individual has not resolved the security concerns raised under Criteria J and H.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criteria J and H. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: July 26, 2006